

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

07/10/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000840

FILED: \_\_\_\_\_

STATE OF ARIZONA

GARY L SHUPE

v.

RYAN PAUL DEVLIN

KEVIN L BURNS

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 5847844

Charge: 1. DUI ALCOHOL  
2. DUI WITH A.C. OF .10 OR HIGHER  
3. NO CURRENT REGISTRATION  
4. RED LIGHT VIOLATION

DOB: 02/24/76

DOC: 10/02/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the receipt of Appellee's memorandum on June 6, 2002. Neither party has requested oral argument. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

Appellant, Ryan Paul Devlin, was arrested on October 2, 2000 and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Content of .10 or Higher, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); No Current Registration, a civil traffic offense in violation of A.R.S. Section 28-2532(A); a Red Light Violation, a civil traffic offense in violation of A.R.S. Section 28-645(A); and Failure to Drive Within One Lane, a civil traffic offense in violation of A.R.S. Section 28-729.1. Appellant entered pleas of Not Guilty and Not Responsible to these charges. Thereafter, Appellant filed a Motion to Suppress the results of the Intoxilyzer machine used to measure Appellant's blood alcohol content. Appellant contended (and presented evidence to support his motion) that the Intoxilyzer machine was not working accurately and properly. The trial court held an evidentiary hearing on Appellant's motion on November 20, 2001. At that hearing, Chester Flaxmeyer, testified for Appellant; Jennifer Valdez testified for Appellee. The trial court ruled as follows:

The court is prepared to make two rulings at this time. Number one, in the event this matter should proceed to jury trial, the State is precluded from attempting to use the statutory method of admission (Intoxilyzer test results).

And number two, as to any other and all other methods of admission (of the Intoxilyzer

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results), the Defendant's motion is denied.  
Thank you.<sup>1</sup>

This Court's review of the trial judge's ruling and conclusions of law on Appellant's Motion to Suppress are made *de novo*.<sup>2</sup> This Court must review the trial judge's ruling on such a motion to suppress using an abuse of discretion standard. That is, this Court should reverse only when it finds that the trial judge abused his or her discretion.<sup>3</sup>

In this case the trial judge correctly concluded, as a matter of law that the Intoxilyzer test results would not be admissible pursuant to the statutory method set forth in A.R.S. Section 28-1323(A). The trial judge also correctly concluded that the Intoxilyzer test results could be admitted pursuant to other methods, such as the "Deason method"<sup>4</sup> provided that appropriate and sufficient foundation was admitted. The trial court refused to preclude the admission of the Intoxilyzer results pursuant to this other method. This Court finds no error in the trial court's ruling.

IT IS THEREFORE ORDERED affirming the trial judge's ruling on Appellant's Motion to Suppress.

IT IS FURTHER ORDERED affirming the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all further and future proceedings in this case.

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<sup>1</sup> R.T. of November 20, 2001, at page 80.

<sup>2</sup> State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Johnson, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

<sup>3</sup> State v. Emery, 141 Ariz. 549, 688 P.2d 175 (1984).

<sup>4</sup> See State ex. rel. Collins v. Seidel (Deason, Real Party in Interest), 142 Ariz. 587, 691 P.2d 678 (1984).